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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,563	07/30/2003	Alexander Aldred	F3313(C)	8653

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EXAMINER
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NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/630,563

Applicant(s)

ALDRED ET AL

Examiner

Kenneth W Noland

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03-23-05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4,6,7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over \*Oliveira et al in view of Mc Gill. Oliveira et al discloses a portable dispenser for edible products having a thermally insulated storage means to store packs (20) or cartridges of ice cream\*\*.The ice cream in the packs would be pushed out by a piston. The dispenser is mounted for front operation and for single handed operation. To provide that the pusher operation of the dispenser would be operated out side of the storage means and has a means to hold the packs (cartridge) would be obvious in view of the teachings of McGill which discloses in col 1 lines 11-23 and in figure 1 a holder to hold a pack or container(cartridge) and which utilizes a piston to push the product out from the container to provide a more stable dispensing of the product from the container. In regard to claim 8,to modify Oliveria et al's cartridges for a given shape ,as frusto – conical, would be obvious as a mere choice of structural design to so provide any desired shape for the cartridges. Finally, in regard to claims 6 and 7, Oliveira et al is also provide with a 'delivery means' as noted on page 3 lines 10-21 that delivers the ice cream through the arms to a cup. The arms are positioned below the backpack storage means shown in figure 1. In regards to claims 6 and 7 the, the recitation of "adapted" is not given any patentable weight in so much as this recitation mere recites a functional

capability and is not a positive recitation of the function , within the meaning of "means – plus – function recitation.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over \*Oliveira et al in view of Mc Gill\*\* as applied to claims 1-4 and 8\*\*\* above, and further in view of \*\*Mc Innes. To modify Oliveira et al's storage means for a cooling means would be obvious in view of the teachings of McIlles' use of the cooling means disclosed in column 3 lines 30-39 to effect a better storage means..\*

4. As noted in the rejection of paragraph 2 above, the recitation of "adapted" is not given any weight for a positive recitation of function within the meaning of means –plus- function recitation. Should the "adapted" language be deleted in claims 1 and 6 , then claim 6 would be considered allowed if rewritten in independent form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W Noland whose telephone number is (703) 308-3200. The examiner can normally be reached on Monday-Thursday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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KENNETH W. NOLAND  
PRIMARY EXAMINER